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Anatoly S. Weiser

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EXAMINER

MONIKANG, GEORGE C

ART UNIT

PAPER NUMBER

2614

NOTIFICATION DATE

DELIVERY MODE

11/04/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/698,297	Applicant(s) WEISER, ANATOLY S.	
	Examiner GEORGE C. MONIKANG	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-53 is/are pending in the application.
- 4a) Of the above claim(s) 23, 24 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-22, 25, 27-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 21-22, 25, 27 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

3. The "second recording medium"; "first sub-portion and second sub-portion" are not described in the specification. Therefore claims 21-22 have been analyzed and rejected accordingly.

4. Claims 34 & 43 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In claims 34 & in claim 43 in a different variation, the limitation reads "a digital representation of the incoming sound corresponding to a first time period beginning a **predetermined length of time before the first predetermined condition** is detected

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and continuing until at least until the first predetermined condition is detected." Since, the first predetermined condition is when a sound exceeds a threshold level, it is clear that the time before the threshold is exceeded cannot be predetermined because the sound might take a longer period before crossing the threshold. Therefore since the period before the first level threshold is exceeded depends on how long an incoming sound takes to exceed a predetermined threshold, it would be unreasonable to set forth "a predetermined length of time before the first predetermined condition is detected" as claimed. Therefore, the claim is analyzed and rejected accordingly.

5.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 34 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 34 recites the limitation "a digital representation of the incoming sound corresponding to a second time period beginning when **the predetermined condition** is detected and continuing until a second predetermined condition is detected." The highlighted portion of the above limitation lacks antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10-14, 21-22, 25, 28, 30-31, 34-36, 41-43, 45-46, 49 & 52-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshizaki et al, US Patent 5870365.

3. Re Claim 10, Yoshizaki et al discloses a method comprising: a device receiving incoming sound (*fig. 1; abstract: the input signal is recorded onto another medium*); the device storing data representative of the incoming sound in a buffer (*fig. 3; col. 4, lines 28-38: incoming sound is saved in the fifo before transferred to the medium*); in response to determining, at a first point in time, that the incoming sound satisfies a recording initiation criteria, the device: retrieving data from the buffer, wherein the data retrieved from the buffer is representative of the incoming sound received during an interval of time preceding the first point in time (*col. 2, lines 13-34: the Yoshizaki et al invention seeks to improve the recording system such that, when a first time initiates a recording, the low sound period before that start time is recorded as well the high period after the start time*); storing the data retrieved from the buffer on a memory medium initiating storage, on the memory medium, of data that is representative of incoming sound received after the first point in time (*col. 5, lines 6-20: sound recorded onto a recording medium; col. 2, lines 13-34: when a first time initiates a recording, the low*

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sound period before that start time is recorded as well the high period after the start time); and in response to determining that the received incoming sound satisfies a recording termination criteria at a second point in time subsequent to the first point in time, the device discontinuing storing data representative of incoming sound on the memory medium (fig. 1; abstract: recording will eventually stop after transfer of audio data is complete. This could be read as a second point in time).

4. Re Claim 11, Yoshizaki et al discloses a method in accordance with claim 10, wherein the step of storing comprises storing the sound in a FIFO (fig. 3; col. 4, lines 28-38: incoming sound is saved in the fifo before transferred to the medium).

Re Claim 12, Yoshizaki et al discloses a method in accordance with claim 10, wherein the recording initiation criteria comprises a sound intensity level of the incoming sound exceeds a first threshold (col. 9, lines 1-16: recording starts when sound passes a first threshold).

Re Claim 13, Yoshizaki et al discloses a method in accordance with claim 12, wherein the recording termination criteria a sound intensity level of the incoming sound being is below a second threshold (fig. 1; abstract: recording will eventually stop after transfer of audio data is complete. This could be read as a second point in time where the sound level is lower because audio data to be transferred is complete).

Re Claim 14, Yoshizaki et al discloses a method in accordance with claim 13, wherein the second threshold is lower than the first threshold (fig. 1; abstract: recording will eventually stop after transfer of audio data is complete. This could be read as a

second point in time where the sound level is lower because audio data to be transferred is complete).

Claims 21-22, 25 have been analyzed and rejected according to claim 10.

Re Claim 28, Yoshizaki et al discloses a device, comprising: an input interface configured to receive input data representing sound (fig. 1; abstract: the input signal is recorded onto another medium); a recording interface configured to facilitate recording data on a recording medium (col. 5, lines 6-20: sound recorded onto a recording medium); a processor and memory having stored thereon instructions executable by the device to cause the device to: an identify one or more detected sound segments and one or more effective silence segments within the-sound (col. 2, lines 13-34: the Yoshizaki et al invention seeks to improve the recording system such that, when a first time initiates a recording, the low sound period/silent before that start time is recorded in such a manner that the absolute quite portion is not recorded while the low sound portion is recorded); transfer data representing the one or more detected sound segments to the recording interface to be recorded on the recording medium (col. 2, lines 13-34: the Yoshizaki et al invention seeks to improve the recording system such that, when a first time initiates a recording, the low sound period/silent before that start time is recorded in such a manner that the absolute quite portion is not recorded while the low sound portion is recorded and the portion of sound after the recording initiating start time/detected sound segment is recorded); and transfer data representing one or more play-back periods to the recording interface to be recorded on the recording medium, wherein the one or more play-back periods are each within one of the one or

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more effective silence segments and immediately preceding one of the one or more detected sound segments (col. 2, lines 13-34: the Yoshizaki et al invention seeks to improve the recording system such that, when a first time initiates a recording, the low sound period/silent before that start time is recorded in such a manner that the absolute quite portion is not recorded while the low sound portion is recorded), wherein at least one play-back period is shorter than the effective silence segment that it is within (col. 2, lines 13-34: the Yoshizaki et al invention seeks to improve the recording system such that, when a first time initiates a recording, the low sound period/silent before that start time is recorded in such a manner that the absolute quite portion is not recorded while the low sound portion is recorded and the low sound portion is less in length than the overall low sound period/ silent mode); wherein data representing portions of the one or more effective silence segments that are not part of the one or more play back periods are not transferred to the recording interface (col. 2, lines 13-34: the Yoshizaki et al invention seeks to improve the recording system such that, when a first time initiates a recording, the low sound period/silent before that start time is recorded in such a manner that the absolute quite portion is not recorded while the low sound portion is recorded).

Re Claim 30, Yoshizaki et al discloses a device in accordance with claim 28, further comprising a buffer configured to store a portion of the input data that represents at least one of the one or more play-back periods, wherein the portion of the input data is stored by the buffer prior to the device transferring the data representing the at least

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one play-back period to the recording interface (fig. 3; col. 4, lines 28-38: incoming sound is saved in the fifo before transferred to the medium).

Claim 31 has been analyzed and rejected according to claim 30.

Claim 34 has been analyzed and rejected according to claim 10.

Claim 35 has been analyzed and rejected according to claim 11.

Claim 36 has been analyzed and rejected according to claim 12.

Claims 41-42 have been analyzed and rejected according to claim 10.

Claim 43 has been analyzed and rejected according to claim 10.

Claim 45 has been analyzed and rejected according to claim 11.

Claim 46 has been analyzed and rejected according to claim 12.

Claim 49 has been analyzed and rejected according to claim 10.

Claims 52-53 have been analyzed and rejected according to claim 10.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshizaki et al, US Patent 5870365.

Re Claim 15, Yoshizaki et al discloses a method in accordance with claim 13, but fails to explicitly disclose wherein the second threshold is the same as the first threshold. However, it is the designer's preference to set the second threshold level to be the same as the first threshold level for the purpose of having the standard threshold throughout operation of the system.

8.

9. Claims 16, 18-19, 27, 37 & 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshizaki et al, US Patent 5870365, in view of Graumann, US Patent Pub. 20040264711 A1.

Re Claim 16, Yoshizaki et al discloses a method in accordance with claim 10, but fails to disclose wherein the recording initiation criteria comprises a spectral power density of the sound exceeding a first threshold. However, Graumann discloses an apparatus where an input audio signal is analyzed to determine a power spectral

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density, wherein the power spectral density is compared with signals in a template to determine which frequencies in the incoming audio signal gets attenuated (Graumann, abstract). It would have been obvious to modify the Yoshizaki et al reference to determine a power spectral density of the incoming sound as taught in Graumann (Graumann, abstract) for the purpose of being able to determine which frequency does the incoming sound exceed the threshold level.

Re Claim 18, Yoshizaki et al discloses a method in accordance with claim 10, but fails to disclose further comprising varying the length of the data retrieved from the buffer. However, Graumann discloses determining a spectral density of an incoming sound, by so doing analyzing the incoming sound in subsets of frequency bands, therefore varying the lengths (Graumann, abstract). It would have been obvious to modify the Yoshizaki et al reference to determine a power spectral density of the incoming sound by so doing analyzing the incoming sound in subsets of frequency bands, therefore varying the lengths as taught in Graumann (Graumann, abstract) for the purpose of being able to determine which frequency does the incoming sound exceed the threshold level.

Claim 19 has been analyzed and rejected according to claim 18.

Claim 27 has been analyzed and rejected according to claim 18.

Claims 37 & 47 have been analyzed and rejected according to claim 16.

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10. Claims 17, 38 & 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshizaki et al, US Patent 5870365, in view of Smith, US Patent Pub. 20020173864 A1.

Re Claim 17, Yoshizaki et al discloses a method in accordance with claim 10, but fails to disclose wherein the recording initiation comprises at least one moving average of the sound intensity level of the incoming sound exceeding a first threshold. However, Smith discloses controller that estimates the moving average of an audio signal and compares with a desired sound level (Smith, abstract). It would have been obvious to modify the Yoshizaki et al reference to determine a moving average of the incoming sound as taught in Smith (Smith, abstract) for the purpose of smoothing out the performance of the system.

Claims 38 & 48 have been analyzed and rejected according to claim 17.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshizaki et al, US Patent 5870365.

Re Claim 20, Yoshizaki et al discloses a method in accordance with claim 10, but fails to explicitly disclose further comprising transmitting the data stored on the memory medium to another device. It is the designer's preference to transmit the data recorded in Yoshizaki et al to another device using the method disclosed in Yoshizaki et al for the purpose of recording audio for numerous users.

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12. Claims 29, 32-33, 39 & 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshizaki et al, US Patent 5870365, in view of Fielder, US Patent 5845240.

Re Claim 32, Yoshizaki et al discloses an input interface coupled to an audio source and configured to generate input data representative of the sound waves (fig. 1: 7; the delay receives signals from the input and transmits it to the signal processor 8); a transmitter (fig. 1: 7; the delay receives signals from the input and transmits it to the signal processor 8); a processor (fig. 1: 8); and memory having stored thereon instructions executable by the processor (col. 2, lines 13-34: the Yoshizaki et al invention seeks to improve the recording system such that, when a first time initiates a recording, the low sound period/silent before that start time is recorded in such a manner that the absolute quite portion is not recorded while the low sound portion is recorded) to cause the sound recorder to: identify one or more detected sound segments and one or more effective silence segments within the sound waves (col. 2, lines 13-34: the Yoshizaki et al invention seeks to improve the recording system such that, when a first time initiates a recording, the low sound period/silent before that start time is recorded in such a manner that the absolute quite portion is not recorded while the low sound portion is recorded); transmit the one or more detected sound segments to a receiving device (col. 2, lines 13-34: the Yoshizaki et al invention seeks to improve the recording system such that, when a first time initiates a recording, the low sound period/silent before that start time is recorded in such a manner that the absolute quite portion is not recorded while the low sound portion is recorded and the portion of sound

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after the recording initiating start time/detected sound segment is recorded); and transmit one or more play-back periods to the receiving device, wherein the one or more play-back periods are each within one of the one or more effective silence segments and immediately preceding one of the one or more detected sound segments (col. 2, lines 13-34: the Yoshizaki et al invention seeks to improve the recording system such that, when a first time initiates a recording, the low sound period/silent before that start time is recorded in such a manner that the absolute quite portion is not recorded while the low sound portion is recorded), wherein at least one play-back period is shorter than the effective silence segment that it is within; wherein portions of the one or more effective silence segments that are not part of the one or more play-back periods are not transmitted (col. 2, lines 13-34: the Yoshizaki et al invention seeks to improve the recording system such that, when a first time initiates a recording, the low sound period/silent before that start time is recorded in such a manner that the absolute quite portion is not recorded while the low sound portion is recorded); but fails to disclose a communication device, comprising: a microphone configured to receive sound waves. However, Fielder discloses a recording system that uses a microphone to pick-up signals that could be recorded onto a medium (Fielder, fig.1, 2: MICROPHONE). It would have been obvious to implement a microphone in the Yoshizaki et al system as done in the Fielder system (Fielder, fig.1, 2: MICROPHONE) for the purpose of recording sounds input through microphones. Though the Yoshizaki et al and Fielder references fail to disclose the communication being carried out wirelessly. It would have

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been obvious to utilize a wireless microphone within the system since wireless microphones are commonly used and they provide portable systems with less wiring.

Re Claim 33, the combined teachings of Yoshizaki et al and Fielder disclose a wireless communication device in accordance with claim 32, further comprising a buffer, wherein the wireless communication device is configured to store a portion of the input data that includes at least one of the one or more play-back periods prior to the at least one play-back period being transmitted (*Yoshizaki et al, fig. 3; col. 4, lines 28-38: incoming sound is saved in the fifo before transferred to the medium*).

Claims 29 & 39 has been analyzed and rejected according to claim 32.

Claim 44 has been analyzed and rejected according to claim 32.

13. Claims 40 & 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshizaki et al, US Patent 5870365, in view of official notice.

Re Claim 40, Yoshizaki et al discloses a method in accordance with claim 34, further comprising reproducing the incoming sound, but fails to explicitly disclose wherein said reproducing includes converting the digital representation of the incoming sound to analog audio signals and outputting the analog audio signals via a speaker. However, official notice is taken that the practice of converting signal to analog before outputting from a speaker is commonly done. Therefore, it would have been obvious for one of ordinary skill to convert the recorded audio signals to analog signals and the output them through a speaker system for optimum user hearing experience.

Claim 51 has been analyzed and rejected according to claim 40.

14. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshizaki et al, US Patent 5870365, in view of Miura et al, US Patent Pub. 20020183873 A1.

Re Claim 50, Yoshizaki et al discloses a recording device in accordance with claim 43, but fails to disclose wherein the recording device includes: an RF unit configured to convert the electrical representation of the incoming sound into a format suitable for transmission as electromagnetic signals (*Miura et al, fig. 2: 26; para 0038*); and a transmitter coupled to the RF unit and configured to transmit the electromagnetic signals (*Miura et al, fig. 2: 26; para 0038*) as taught in Miura et al. It would have been obvious to modify the Yoshizaki et al system with an RF generator that converts the signals in formats suitable for electromagnetic transmission as taught in Miura et al (*Miura et al, fig. 2: 26; para 0038*) for the purpose of making the system more dynamic.

Contact

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GEORGE C. MONIKANG whose telephone number is (571)270-1190. The examiner can normally be reached on M-F. alt Fri. Off 7:30am-5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George C Monikang/
Examiner, Art Unit 2614

10/26/2009

/Vivian Chin/
Supervisory Patent Examiner, Art Unit 2614